

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO.31884 of 1997

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DATE: 01-02-2006

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Between:

1. Kummari Laxmaiah (Died) and others

.. Petitioners

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1. The Government of Andhra Pradesh, represented by its Secretary, Revenue Department, Secretariat, Hyderabad and others.

..Respondents

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ORAL ORDER:

Petitioners, whose lands were acquired for the purpose of Nagarjuna Sagar Left Canal, had, after coming to know that a part of the land acquired from them is not utilized for the purpose for which it was acquired and is lying waste, and after coming to know that some persons whose lands also were acquired along with their lands for the same purpose, filed a writ petition in this Court and obtained orders for re-conveyance of the lands not utilized for the purpose for which they were acquired,

made a request to the respondents for re-conveyance of the unutilized land on repayment of the compensation paid to them, and have filed W.P.No.1342 of 1992 seeking a direction to the respondents to re-convey the unutilized lands to them, in which a learned Judge had on 29.02.1996 gave a direction to the Chief Engineer, Nagarjuna Sagar Canals Project (4th respondent) and the Superintending Engineer, Nagarjuna Sagar Left Canals (5th respondent) to consider the representation of the petitioners for re-conveyance of the land acquired from them, if it was not utilized for the purpose for which it was acquired or if that land is not required for public purpose in future. That order was reviewed through an order dated 01-04-1996 by deleting the last sentence reading "If it is not required for public purpose in future". Thereafter, petitioners sent an amount of Rs.1832/-, being the prorata compensation paid to them in 1969, to the 5th respondent-the Superintending Engineer, Nagarjuna Sagar Left Canal, and later filed W.P.No.17846 of 1996 for a direction to the respondents, to take action on their representation, whereupon 5th respondent, through the letter dated 29-03-1997, returned the amount of Rs.1832/- sent by the petitioners through a demand draft. Hence, petitioners filed this petition seeking a direction to the respondents to re-convey the unutilized portion of the land in S.No.98 which was acquired from them earlier.

2. Though the writ petition is filed in 1997, no counter affidavit is filed on behalf of the respondents till today.

3. The contention of the learned counsel for petitioners is that 5th respondent under an erroneous impression that the amount of Rs.1832/- was sent by the petitioners in respect of the land covered by S.Nos.283 and 285 had returned that amount, when in fact they sent the amount towards the value of the land in S.No.98, a part of which was not utilized for the purpose for which it was acquired and is still lying vacant, and contended that since that land is lying vacant and is being encroached by unsocial elements, respondents may be directed to re-convey the lands of petitioners after receiving the compensation paid to the petitioners for that land from them.

4. The contention of the learned counsel for the petitioners that in view of the order dated 01-04-1996 in W.P.No.1342 of 1992, as modified, petitioners are entitled to the relief sought cannot be accepted because the learned Judge by the said order directed the respondents therein to consider the representation of the petitioners. If the respondents did not communicate the decision taken to the petitioners, or if the respondents did not act upon that order, the remedy of the petitioners is elsewhere. This petition has to be disposed of on its own merits but not on the basis of the order in the earlier writ petition.

5. The learned Assistant Government Pleader relying on **GOVT.OF A.P. v. SYED AKBAR** contended that since the land acquired from the petitioners vested in the Government, question of re-conveying the same to the petitioners on the ground that it is not utilized for public purpose does not arise.

6. As per Section 16 of the Land Acquisition Act, 1894 (the Act), if possession of the land acquired is taken over and if an award is passed by the land acquisition officer, that land absolutely vests in the Government free from all encumbrances. In this case, the land in S.No.98 in respect of which this petition is filed, admittedly was acquired in 1969 after taking over possession and an award also was passed. So, the land in S.No.98 stood vested in the Government in 1969 itself. Therefore, petitioners ceased to have any right, title or interest in the acquired land in S.No.98 as it became the property of the Government. The fact that a part of the land acquired for a public purpose is not utilized for public purpose, per se would not clothe the erstwhile owner to seek

re-conveyance of that land, because question of cancellation of acquisition when once the proceedings of acquisition are complete does not arise, as the apex Court in **LT. GOVERNOR OF HIMACHAL PRADESH v. AVINASH SHARMA** held that government has no power either to withdraw or cancel a notification for acquisition after the land vested in the Government. In **GULAM MUSTAFA v. STATE OF MAHARASHTRA** the apex Court held that inasmuch as title vests in the beneficiary, after valid acquisition, how the beneficiary uses the acquired land is not the concern of the original owner and so he cannot, on the basis that the land acquired is not used for the purpose for which it was acquired, seek invalidation of the acquisition. In view of the ratio in the above decisions, the fact that a part of the

land which was acquired for public purpose, is not in fact utilized for the purpose for which it was acquired, would not clothe the petitioners with a right to seek re-conveyance of that land. In fact, in **SYED AKBAR** case (1 supra) relied on by the learned Assistant Government Pleader the apex Court holding that the unused portion of a land acquired for a public purpose can be utilized for some other public purpose, had set aside the order of the High Court directing re-conveyance of the unused land to the original owner. In view thereof, petitioners are not entitled to the relief sought. However, petitioners are at liberty to make an application for assignment of the land. If they are entitled to assignment of the lands under the relevant rules, respondents can take a decision thereon keeping in view the relevant rules.

7. With the above observations, the petition is dismissed. No order as to costs.

(C.Y.Somayajulu, J.)

Date: 01-02-2006

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